

MAY 16 1966

IN THE

JOHN F. DAVIS, CLERK

Supreme Court of the United States

October Term, 1965

No. ~~1008~~ 105

HARRY KEYISHIAN, GEORGE HOCHFIELD, NEWTON GARVER,
RALPH MAUD and GEORGE E. STARBUCK,

Appellants,

vs.

THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE
OF NEW YORK, BOARD OF TRUSTEES OF THE STATE UNI-
VERSITY OF NEW YORK, STATE UNIVERSITY OF NEW YORK
AT BUFFALO, SAMUEL B. GOULD, CLIFFORD C. FURNAS, J.
LAWRENCE MURRAY, ARTHUR LEVITT, DEPARTMENT OF
CIVIL SERVICE OF THE STATE OF NEW YORK, CIVIL SERVICE
COMMISSION OF THE STATE OF NEW YORK, MARY GOODE
KRONE, and ALEXANDER A. FALK,

Appellees.

ON DIRECT APPEAL FROM THE FINAL JUDGMENT OF A THREE JUDGE UNITED
STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

**MOTION AND BRIEF TO DISMISS FOR BOARD OF TRUS-
TEES OF STATE UNIVERSITY OF NEW YORK, STATE
UNIVERSITY OF NEW YORK AT BUFFALO, CLIFFORD
C. FURNAS AND J. LAWRENCE MURRAY, APPELLEES,
AND APPENDIX**

JOHN C. CRARY, JR.
State University Counsel
Attorney for above Appellees
10 Thurlow Terrace
Albany, New York 12201

RICHARD A. FOSTER
DAVID L. SEGEL

Of Counsel

INDEX.

	PAGE
Motion to Dismiss Appeal	1
Statement of the Case	1
Argument	2
I. This appeal presents no substantial federal question	2
II. The specific questions of unconstitutionality raised by the appellants have no factual basis ..	6
a. The <i>Ex-Post Facto</i> Argument	6
b. The Bill of Attainder Argument	6
c. Vagueness	6
d. Comparison with Other Cases	7
e. The New University Procedure	7
CONCLUSION. The appeal should be dismissed on the ground that it does not present any substantial federal question warranting this court to take jurisdiction, or, in the alternative, the decision of the United States District Court, Western District of New York, should be affirmed	8

CITATIONS.

Cases:

<i>Adler v. Board of Education</i> , 342 U. S. 485 (1952) ...	4, 5
<i>Baggett v. Bullitt</i> , 377 U. S. 360 (1964)	6, 7
<i>Beilan v. Board of Public Education</i> , 357 U. S. 399 (1958)	6, 7
<i>Elfbrandt v. Russell</i> , 34 U. S. L. Week 4347, 16 L. ed. 2d 321, 86 S. Ct. ____ (1966)	7
<i>Garner v. Los Angeles Board</i> , 341 U. S. 716 (1961) ..	7
<i>Lerner v. Casey</i> , 357 U. S. 468 (1958)	7
<i>Nelson v. Los Angeles</i> , 362 U. S. 1 (1960)	7
<i>Thompson v. Wallin</i> , 300 N. Y. 476, 494 (1950)	3, 4, 5

Statutes:

N. Y. Education Law § 3022 (2)	3, 4
--------------------------------------	------

II.

INDEX TO APPENDIX.

	PAGE
Statutes:	
N. Y. Civil Service Law § 105	9
N. Y. Education Law § 3021	11
N. Y. Education Law § 3022	11
N. Y. Penal Law § 160	12
N. Y. Penal Law § 161	12
Administratives Rules and Certificates:	
Rules of the N. Y. S. Board of Regents:	
Article XVIII, Section 244 (Adopted July 15, 1949)	13
Trustees' Certificates:	
A.	17
B.	17
Resolutions:	
Resolution of the Board of Trustees of the State University of New York	18

IN THE
Supreme Court of the United States

October Term, 1965

No.

**HARRY KEYISHIAN, GEORGE HOCHFELD, NEWTON GARVER,
RALPH MAUD and GEORGE E. STARBUCK,**

Appellants,

vs.

**THE BOARD OF REGENTS OF THE UNIVERSITY OF THE STATE
OF NEW YORK, BOARD OF TRUSTEES OF THE STATE UNI-
VERSITY OF NEW YORK, STATE UNIVERSITY OF NEW YORK
AT BUFFALO, SAMUEL B. GOULD, CLIFFORD C. FURNAS, J.
LAWRENCE MURRAY, ARTHUR LEVITT, DEPARTMENT OF
CIVIL SERVICE OF THE STATE OF NEW YORK, CIVIL SERVICE
COMMISSION OF THE STATE OF NEW YORK, MARY GOODE
KRONE, and ALEXANDER A. FALK,**

Appellees.

**ON DIRECT APPEAL FROM THE FINAL JUDGMENT OF A THREE JUDGE UNITED
STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.**

Motion to Dismiss Appeal

Appellees move to dismiss Appellants' appeal upon the ground that there is not presented any substantial Federal question

**BRIEF TO DISMISS FOR BOARD OF TRUSTEES OF STATE
UNIVERSITY OF NEW YORK, STATE UNIVERSITY OF
NEW YORK AT BUFFALO, CLIFFORD C. FURNAS AND
J. LAWRENCE MURRAY, APPELLEES**

Statement of the Case

Four members of the academic community of the State University of New York at Buffalo refused to sign a certi-

ificate which would inform the State University as to present or past membership in the communist party. The fifth appellant, Starbuck, refused to answer questions as to subversive activities on his employment form. Appellants initiated this action to enjoin the University officials from acting upon their refusal. The refusal to sign, itself, was based upon principle, that the certificate and underlying statutes and rules involved are unconstitutional; there is no indication that any of the appellants are, in fact, members of any communist party.

The certificate is an implementation by the State University of a series of statutes of New York State denying State employment to those who advocate the violent overthrow of the government of the United States or of the State of New York or any political subdivision thereof. These statutes, rules, certificates and the other procedures involved are set forth in the Appendix.

Request for a three-judge court was denied in the initial stages of the action. Instead, the single district judge dismissed the complaint for want of a substantial federal question. This was appealed to the Circuit Court of Appeals, which court allowed the convening of a three-judge court on the grounds that there were substantial constitutional issues. The present appeal is from the decision of the three-judge court dismissing the action.

ARGUMENT

I. This appeal presents no substantial federal constitutional question.

The purpose of the certificates and questionnaires is for eliciting information. One who refuses to sign and explain

why he refuses is not automatically denied any of his employment rights. Appellants in this case refused to cooperate, actually. They would neither sign nor explain their refusal actions. The presence of the certificate or the questionnaire alerts the University officials that a situation may exist where further inquiry is necessary to determine whether the employee or prospective employee is a member of a communist party because he actively advocates that part of communist doctrine that government can only be changed by force and violent overthrow. If he personally so advocates, he cannot be employed by the State of New York.

The statutes involved here make proof of membership in an organization that advocates the violent overthrow of the government *prima facie* evidence of disqualification for employment. (*Education Law*, § 3022, subdiv. 2). The burden of proving a personal and individual advocacy in such violent overthrow remains with the state, however. This interpretation was made clear by the New York Court of Appeals in *Thompson v. Wallin*, 300 N. Y. 476, 494 (1950) in which the court wrote:

"Under subdivision 2 of the statute no organization may be listed by the Board of Regents as subversive until 'after inquiry, and after such notice and hearing as may be appropriate'. The statute also makes it clear that, when it appears that one who seeks to establish or retain employment in the State public school system knowingly holds membership in an organization named upon any listing for which subdivision 2 of section 3022 makes provision, proof of such membership 'shall constitute *prima facie* evidence of disqualification' for such employment. But, as was said in *Potts v. Pardee* (220 N. Y. 431, 433): 'Presumption growing out of a *prima facie* case . . . remains only so long as there is no substantial evidence to the contrary. When that is offered the presumption disap-

pears, and unless met by further proof there is nothing to justify a finding based solely upon it.' Thus the phrase '*prima facie* evidence of disqualification', as used in the statute, imports a hearing at which one who seeks appointment to or retention in a public school position shall be afforded an opportunity to present substantial evidence contrary to the presumption sanctioned by the *prima facie* evidence for which subdivision 2 of section 3022 make provision. Once such contrary evidence has been received, however, the official who made the order of ineligibility has thereafter the burden of sustaining the validity of that order by a fair preponderance of the evidence. (Civil Service Law, sec. 12-a, subdiv. d). Should an order of ineligibility then issue, the party aggrieved thereby may avail himself of the provisions for review prescribed by the section of the statute last cited above. In that view there here arises no question of procedural due process. Reading the statute in that way, as we do, we cannot say there is no rational relation between the legislative findings which prompted the enactment of the Feinberg Law and the measures prescribed therein to safeguard the public school system of the State."

Thompson v. Wallin (1950), 301 N. Y. 476, 494.

Thompson v. Wallin was affirmed under the name *Adler v. Board of Education*, 342 U. S. 485 (1952). The Supreme Court of the United States accepts interpretation of state statutes by the highest state court concerned as being correct and applicable as that state's law.

Not all of the statutes, rules and procedures that give rise to this action were in existence before the court in the *Adler* case, *supra*, subdivision 3 of section 105 of the Civil Service Law (*infra*, appendix), the second paragraph of subdivision 1(c) of section 105 of the *Civil Service Law* (*infra*, appendix), the expanded section 3022 of the *Education Law* making it applicable to institutions of higher edu-

cation as well as public schools (*infra*, appendix), and the trustees' certificates (*infra*, appendix), have all come into existence since the *Adler* decision. None of the post-*Adler* state activity changes the fundamental complex aimed at weeding out those who advocate the violent overthrow of the government, however. Subdivision 3 of section 105 of the *Civil Service Law* provides for removal from state employ those who make treasonable or seditious acts or utterances as defined in the Penal Law. (§§ 160 and 161 of the *Penal Law*, *infra*, appendix). The second paragraph of subdivision 1(c) of the *Civil Service Law* makes statutory the finding of the Board of Regents, after investigation, that membership in the national or state communist party constitutes *prima facie* evidence of disqualification for appointment to or retention of state employment. The trustees' certificates contained and governed as they are by the state court's interpretation of the underlying statutes implement action on no broader scope than if they had been required before the *Adler* decision.

Since the additions to state law and procedure since the *Adler* decision do not affect or change the fundamentals of the problem, these new adjuncts are still restricted, governed and guided by the interpretation of the state court in the *Thompson v. Wallin* decision (*supra*). Since the Supreme Court of the United States has already reviewed the statutory-rules-procedure complex in the appeal of *Thompson v. Wallin* in the *Adler* decision, there is no substantial federal question before this court under the present appeal.

II. The specific questions of unconstitutionality raised by the appellants have no factual basis.

a. The Ex-Post Facto Argument

All statutes and procedures involved in this action were in existence before the appellants were asked to comply with them. No rights of the appellants were affected or could be affected by any of their actions or activities that took place prior to the existence of these statutes and procedures. The query as to past membership in the communist parties in the certificate is only to prompt the University as to the possible necessity of further inquiry to determine whether termination of such membership indicated a change of belief or was for more routine reasons. The state is still bound to the burden of proving a present personal advocacy for overthrow by force and violence. This methodology is acceptable. *Beilan v. Board of Public Education*, 357 U. S. 399 (1958).

b. The Bill of Attainder Argument

The only way the bill of attainder issue could arise in this action is by proposing that the membership in a communist party, as elicited by the certificate, is automatic grounds for dismissal or a refusal to employ. Since the state can be taken to a hearing and eventually to the state courts and in both forums be required to prove actual advocacy of violent overthrow, and since there is no aspect of association that can substitute for such proof, the sponsor of a bill of attainder has a specious base.

c. Vagueness

These statutes do not tell a man what he may do, only that he may not advocate the doctrine of violent overthrow. The statutes must be narrowly interpreted. *Baggett v.*

Bullitt, 377 U. S. 360 (1964). A state employee, subject to these statutes, may teach communist theory, may write in defense of communism, may edit communist literature, may distribute communist literature, may even take part in communist sponsored activities or meetings. No matter what his position in state employ, the only restriction on him is advocacy of violent overthrow. Such a picture can hardly place one in a state of uncertainty.

d. Comparison with Other Cases

The oath in *Baggett v. Bullitt*, 377 U. S. 360 (1964) condemned activity much more remote, to aid one aiding, compared to the facts of this action.

The decision in the case of *Elfbrandt v. Russell*, 34 U. S. L. Week 4347, April 19, 1966 was concerned with a statute denying the freedom of association; there is no such restriction in New York.

A state has a right to inquire into the qualifications and fitness for employment of its personnel or prospective employees. *Garner v. Los Angeles Board*, 341 U. S. 716 (1961), *Lerner v. Casey*, 357 U. S. 468, *Beilan v. Board of Education*, 357 U. S. 399; *Nelson v. Los Angeles*, 362 U. S. 1 (1960). This implies an inquiry of enough vigor to be effective.

e. The New University Procedure

The Board of Trustees of the State University of New York has adopted by resolution 65-100 (*infra*, appendix) a new procedure that eliminates the use of the trustees' certificate. There is now an informal discussion of the statutory complex that is a condition of employment. The discussion explores the meaning of the complex as well as ascertains whether the employee or prospective employee

is subject to any of the prohibitions involved. It is submitted that this is an improvement over an already acceptable procedure.

Such is the limited extent of the state's interest as shown by these statutes.

CONCLUSION

The appeal should be dismissed on the ground that it does not present any substantial federal question warranting this court to take jurisdiction, or, in the alternative, the decision of the United States District Court, Western District of New York, should be affirmed.

Respectfully submitted,

JOHN C. CRARY, JR.,
State University Counsel,
Attorney for Appellees,
10 Thurlow Terrace,
Albany, New York 12201.

RICHARD A. FOSTER,
DAVID L. SEGAL,
of Counsel.

APPENDIX

§ 105 of the N. Y. Civil Service Law. Subversive activities; disqualification

"1. Ineligibility of persons advocating overthrow of government by force or unlawful means. No person shall be appointed to any office or position in the service of the state or of any civil division thereof, nor shall any person employed in any such office or position be continued in such employment, nor shall any person be employed in the public service as superintendent, principal or teacher in a public school or academy or in a state college or any other state educational institution who:

"(a) by word of mouth or writing wilfully and deliberately advocates, advises or teaches the doctrine that the government of the United States or of any state or of any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means; or

"(b) prints, publishes, edits, issues or sells any book, paper, document or written or printed matter in any form containing or advocating, advising or teaching the doctrine that the government of the United States or of any state or of any political subdivision thereof should be overthrown by force, violence or any unlawful means, and who advocates, advises, teaches, or embraces the duty, necessity or propriety of adopting the doctrine contained therein;

"(c) organizes or helps to organize or becomes a member of any society or group of persons which teaches or advocates that the government of the United States or of any state or of any political subdivision thereof shall be overthrown by force or violence, or by any unlawful means.

"For the purposes of this section, membership in the communist party of the United States of America or the communist party of the state of New York shall constitute *prima facie* evidence of disqualification for appointment to or retention in any office or position in

the service of the state or of any city or civil division thereof.

"2. A person dismissed or declared ineligible pursuant to this section may within four months of such dismissal or declaration of ineligibility be entitled to petition for an order to show cause signed by a justice of the supreme court, why a hearing on such charges should not be had. Until the final judgment on said hearing is entered, the order to show cause shall stay the effect of any order of dismissal or ineligibility based on the provisions of this section; provided, however, that during such stay a person so dismissed shall be suspended without pay, and if the final determination shall be in his favor he shall be restored to his position with pay for the period of such suspension less the amount of compensation which he may have earned in any other employment or occupation and any unemployment insurance benefits he may have received during such period. The hearing shall consist of the taking of testimony in open court with opportunity for cross examination. The burden of sustaining the validity of the order of dismissal or ineligibility by a fair preponderance of the credible evidence shall be upon the person making such dismissal or order of ineligibility.

"3. Removal for treasonable or seditious acts or utterances. A person in the civil service of the state or of any civil division thereof shall be removable therefrom for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts while holding such position. For the purpose of this subdivision, a treasonable word or act shall mean 'treason', as defined in the penal law.¹; a seditious word or act shall mean 'criminal anarchy' as defined in the penal law.² L. 1958, c. 790, eff. April 1, 1959; amended L. 1958, c. 503, § 2, eff. April 9, 1958."

¹ See Penal Law, § 2380.

² See Penal Law, § 160.

§ 3021 of the New York Education Law: Removal of superintendents, teachers and employees for treasonable or seditious acts or utterances

"A person employed as superintendent of schools, teacher or employee in the public schools, in any city or school district of the state, shall be removed from such position for the utterance of any treasonable or seditious word or words or the doing of any treasonable or seditious act or acts while holding such position."

§ 3022 of the New York Education Law: Elimination of subversive persons from the public school system

"1. The board of regents shall adopt, promulgate, and enforce rules and regulations for the disqualification or removal of superintendents of schools, teachers or employees in the public schools in any city or school district of the state and the faculty members and all other personnel and employees of any college or other institution of higher education owned and operated by the state or any subdivision thereof who violate the provisions of section three thousand twenty-one of this article or who are ineligible for appointment to or retention in any office or position in such public schools or such institutions of higher education on any of the grounds set forth in section twelve-a of the civil service law and shall provide therein appropriate methods and procedure for the enforcement of such sections of this article and the civil service law.

"2. The board of regents shall, after inquiry, and after such notice and hearing as may be appropriate, make a listing of organizations which it finds to be subversive in that they advocate, advise, teach or embrace the doctrine that the government of the United States or of any state or of any political subdivision thereof shall be overthrown or overturned by force, violence or any unlawful means, or that they advocate, advise, teach or embrace the duty, necessity or propriety of adopting any such doctrine, as set forth in section twelve-a of the civil service law. Such listings may be amended and revised from time to time. The

board, in making such inquiry, may utilize any similar listings or designations promulgated by any federal agency or authority authorized by federal law, regulation or executive order, and for the purposes of such inquiry, the board may request and receive from such federal agencies or authorities any supporting material or evidence that may be made available to it. The board of regents shall provide in the rules and regulations required by subdivision one hereof that membership in any such organization included in such listing made by it shall constitute *prima facie* evidence of disqualification for appointment to or retention in any office or position in the public schools of the state.

"3. The board of regents shall annually, on or before the fifteenth day of February, by separate report, render to the legislature, a full statement of measures taken by it for the enforcement of such provisions of law and to require compliance therewith. Such reports shall contain a description of surveys made by the board of regents, from time to time, as may be appropriate, to ascertain the extent to which such provisions of law have been enforced in the city and school districts of the state. Added L. 1949, c. 360, § 3; amended L. 1953, c. 681, § 1, eff. April 13, 1953."

SECTION 160 of the New York Penal Law: Criminal anarchy defined.

"Criminal anarchy is the doctrine that organized government should be overthrown by force or violence, or by assassination of the executive head or of any of the executive officials of government, or by any unlawful means. The advocacy of such doctrine either by word of mouth or writing is a felony."

SECTION 161 of the New York Penal Law: Advocacy of criminal anarchy.

"Any person who:

"1. By word of mouth or writing advocates, advises or teaches the duty, necessity or propriety of overthrowing or overturning organized government by

force or violence, or by assassination of the executive head or of any of the executive officials of government or by any unlawful means; or,

"2. Prints, publishes, edits, issues or knowingly circulates, sells, distributes or publicly displays any book, paper, document or written or printed matter in any form, containing or advocating, advising or teaching the doctrine that organized government should be overthrown by force, violence or any unlawful means; or

"3. Openly, wilfully and deliberately justifies by word of mouth or writing the assassination or unlawful killing or assaulting of any executive or other officer of the United States or of any state or for any civilized nation having an organized government, because of his official character, or any other crime, without intent to teach, spread or advocate the propriety of the doctrines of criminal anarchy; or

"4. Organizes or helps to organize or becomes a member of or voluntarily assembles with any society, group or assembly of persons formed to teach or advocate such a doctrine

"Is guilty of a felony and punishable by imprisonment for not more than ten years, or by a fine of not more than five thousand dollars, or both."

ARTICLE XVIII, SECTION 244, RULES OF THE BOARD OF REGENTS (Adopted July 15, 1949), captioned, "Subversive Activities", and provides:

"1. The school authorities of each school district shall take all necessary action to put into effect the following procedures for disqualification or removal of superintendents, teachers or other employes who violate the provisions of section 3021 of the Education Law or section 12-a³ of the Civil Service Law.

"a. Prior to the appointment of any superintendent, teacher or employe, the nominating official, in addition to making due inquiry as to the candidate's

³ Now section 105.

academic record, professional training, experience and personal qualities, shall inquire of prior employers, and such other persons as may be in a position to furnish pertinent information, as to whether the candidate is known to have violated the aforesaid statutory provisions, including the provisions with respect to membership in organizations listed by the Board of Regents as subversive in accordance with paragraph 2 hereof. No person who is found to have violated the said statutory provisions shall be eligible for employment.

"b. The school authorities shall require one or more of the officials in their employ, whom they shall designate for such purpose, to submit to them in writing not later than October 31, 1949, and not later than September 30th of each school year thereafter, a report on each teacher or other employe. Such report shall either (1) state that there is no evidence indicating that such teacher or other employe has violated the statutory provisions herein referred to, including the provisions with respect to membership in organizations listed by the Regents as subversive in accordance with paragraph 2 hereof; or (2) where there is evidence indicating a violation of said statutory provisions, including membership in such a subversive organization, recommend that action be taken to dismiss such teacher or other employe, on the ground of a specified violation or violations of the law.

"d. The school authorities shall themselves prepare such reports on the superintendent of schools and such other officials as may be directly responsible to them, including the officials designated by them in accordance with subdivision b of this paragraph.

"d. The school authorities shall proceed as promptly as possible, and in any event within 90 days after the submission of the recommendations required in subdivision b of this paragraph, either to prefer formal charges against superintendents, teachers or other employes for whom the evidence justifies such action, or to reject the recommendations for such action.

"e. Following the determination required in subdivision d of this paragraph, the school authorities

shall immediately institute proceedings for the dismissal of superintendents, teachers or other employes in those cases in which in their judgment the evidence indicates violation of the statutory provisions herein referred to. In proceedings against persons serving on probation or those having tenure, the appropriate statutory procedure for dismissal shall be followed. In proceedings against persons serving under contract and not under the provisions of a tenure law, the school authorities shall conduct such hearings on charges as they deem the exigencies warrant, before taking final action on dismissal. In all cases all rights to a fair trial, representation by counsel and appeal or court review as provided by statute or the Constitution shall be scrupulously observed.

"2. Pursuant to chapter 360 of the Laws of 1949, the Board of Regents will issue a list, which may be amended and revised from time to time, of organizations which the Board finds to be subversive in that they advocate, advise, teach or embrace the doctrine that the Government of the United States, or of any state or of any political subdivision thereof, shall be overthrown or overturned by force, violence or any unlawful means, or that they advocate, advise, teach or embrace the duty, necessity or propriety of adopting any such doctrine, as set forth in section 12-a⁴ of the Civil Service Law. Evidence of membership in any organization so listed on or after the tenth day subsequent to the date of official promulgation of such list shall constitute *prima facie* evidence of disqualification for appointment to or retention of any office or position in the school system. Evidence of membership in such an organization prior to said day shall be presumptive evidence that membership has continued, in the absence of a showing that such membership has been terminated in good faith.

"3. On or before the first day of December of each year, the school authorities of each school district shall render to the Commissioner of Education a full report, officially adopted by the school authorities and signed

⁴ Now section 105.

by their presiding officer, of the measures taken by them for the enforcement of these regulations during the calendar year ending on the 31st day of October preceding. Such report shall include a statement as to (a) the total number of superintendents, teachers and other employes in the employ of the school district; (b) the number of superintendents, teachers and other employes as to whom the school authorities and/or the officials designated by them have reported that there is no evidence indicating that such employes have violated the statutory provisions herein referred to, including the provisions with respect to membership in organizations listed by the Regents as subversive; and (c) the number of superintendents, teachers and other employes in whose cases the school authorities and/or the officials designated by them have recommended that action be taken to dismiss the employes in question, on the grounds of specified violations of the law or evidence of membership in a subversive organization. Such report shall also include, for the group listed under (c) above, a statement of (d) the number of cases in which charges have been or are to be preferred and the status or final disposition of each of these cases; (e) the number of cases in which the school authorities have concluded that the evidence reported by the designated officials does not warrant the preferring of charges; and (f) the number of cases in which the school authorities have not determined, as of October 31st of the school year in question, on the action to be taken.

"4. Immediately upon the finding by school authorities that any person is disqualified for appointment or retention in employment under these regulations, said school authorities shall report to the Commissioner of Education the name of such person and the evidence supporting his disqualification, including a transcript of the official records of hearings on charges, if any, which have been conducted."

TRUSTEES' CERTIFICATES

A. "Certificate

"Anyone who is a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof cannot be employed by the State University.

"Anyone who was previously a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof is directed to confer with the President before signing this certificate.

• • •

"This is to certify that I have read the publication of the University of the State of New York, 1959, entitled 'Regents Rule on Subversive Activities' together with the instructions set forth above and understand that these rules and regulations as well as the laws cited therein are part of the terms of my employment. I further certify that I am not now a member of the Communist Party and that if I have ever been a member of the Communist Party I have communicated that fact to the President of the State University of New York.

..... Date Signature"

B. "Certificate

"Anyone who is a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political subdivision thereof can not be employed by the State University.

"Anyone who was previously a member of the Communist Party or of any organization that advocates the violent overthrow of the Government of the United States or of the State of New York or any political

subdivision thereof is directed to confer with the President before signing this certificate.

"This is to certify that I have read the publication of the University of the State of New York, 1959, entitled 'Regents Rules on Subversive Activities' together with the instructions set forth above and understand that these rules and regulations as presented to me, as well as the laws cited therein, except for the Education Commissioner's memorandum are part of the terms of my employment. I further certify that I am not now a member of the Communist Party of the State of New York or of the United States, and that if I have ever been a member of the Communist Party of the State of New York or of the United States, I have communicated that fact to the President of the State University of New York.

..... Date Signature"

RESOLUTION OF THE BOARD OF TRUSTEES OF THE STATE UNIVERSITY OF NEW YORK (REPLACING TRUSTEES' CERTIFICATES "A" AND "B").

"Resolved that Resolution 65-100 adopted May 13, 1965, be and the same hereby is, amended to read as follows:

Resolved that Resolution No. 56-98 adopted on October 11, 1956, incorporated into the Policies of the Board of Trustees as Section 3 of Title B of Article XI thereof, and the Procedure of New Academic Appointments therein referred to, be and the same hereby are, **Rescinded**, and

Further Resolved that Title B of Article XI of the Policies of the Board of Trustees be amended by adding a new Section 3 thereto to read as follows:

§ 3. Procedure for appointments.

Before any initial appointment shall hereafter be made to any position certified to be in the professional service of the University pursuant to Section 35 of the Civil Service Law the officer authorized to

make such appointment or to make the initial recommendation therefor shall send or give to the prospective appointee a statement prepared by the President concisely explaining the disqualification imposed by Section 105 of the Civil Service Law and by Section 3022 of the Education Law and the Rules of the Board of Regents thereunder, including the presumption of such disqualification by reason of membership in organizations listed by the Board of Regents. Such officer, in addition to due inquiry as to the candidate's record, professional training, experience and personal qualities, shall make or cause to be made such further inquiry as may be needed to satisfy him as to whether or not such candidate is disqualified under the provisions of such statute and rules. Should any question arise in the course of such inquiry such candidate may request or such officer may require a personal interview. Refusal of a candidate to answer any question relevant to such inquiry by such officer shall be sufficient ground to refuse to make or recommend appointment. An appointment or recommendation for appointment shall constitute a certification by the appointing or recommending officer that due inquiry has been made and that he finds no reason to believe that the candidate is disqualified for the appointment.

"Further Resolved

"that this resolution shall become effective July 1, 1965, provided, however, that this resolution shall become effective immediately with respect to appointments made or recommended prior to July 1, 1965 to take effect on or after that date."